

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

ORIGINAL

75-1299

B
DPS

United States Court of Appeals

For the Second Circuit.

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against-

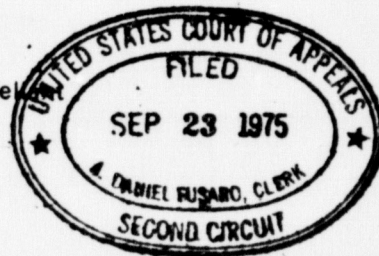
DANIEL STALEY,

Defendant-Appellant.

*On Appeal From The United States District Court
For The Eastern District Of New York*

Appellant's Appendix

MEYER GROSSMAN
Attorney for Defendant-Appel
26 Court Street
Brooklyn, N.Y.



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D. C. Form No. 100
CRIMINAL DOCKET

74CR 226.

74-24
70-CP-489 JUDP.
24-56-500

[illegible]

ABSTRACT OF COSTS	AMOUNT		CASH RECEIVED AND DISBURSED			
			DATE	NAME	RECEIVED	
<i>Fine,</i>						
<i>Clerk,</i>						
<i>Marshal,</i>						
<i>Attorney,</i>						
<i>Commissioner's Court,</i>						
<i>Witnesses,</i>						

DATE	PROCEEDINGS
3-28-74	Before Bartels J - Indictment filed - Bench Warrant Ordered/Issued
4-1-74	Before Judd, J - case called & adjd to 4-4-74 at 2:00 PM.
4-4-74	Notice of Appearance filed.
4-4-74	Before JUDD, J - case called - Meyer Grossman present for deft - deft brought into court on a bench warrant - deft arraigned and enters a plea of not guilty - bail hearing set for 4-19-74 at 10:00 am.
4-9-74	Notice of Readiness for trial filed.
4-19-74	Before JUDD, J - case called - deft & counsel Meyer Grossman present - defts motion for reduction of bail - motion argued and denied - bail contd at \$100,000 Surety Bond - case adjd to May 20 1974 for trial.

74CR 226

DATE	PROCEEDINGS
20-74	Before JUDD, J. - Case called- Adj'd to 5-22-74 at 1:45 A.M.
2-74	Before JUDD, J. - Case called- Adj'd to 5-29-74
2-74	Before JUDD, J - case called deft & counsel M. Grossman present - adj'd to June 17, 1974 for trial.
2-74	Notice of Motion filed ret. June 17, 1974, for bail review.
7-74	Affidavit of MEYER I. GROSSMAN filed
7-74	Before JUDD, J - case called - deft present - counsel not present- Trial adj'd to June 20, 1974.
20-74	Before JUDD, J. - Case called- Deft and counsel present- Deft's motion for bail reduction- Granted- Bail reduced to \$50,000 Surety Bond Discovery hearing set down for 6-28-74 at 10:00 A.M. Trial set for 7-1-74 at 10:00 A.M.
25-74	Notice of motion for discovery and inspection, etc. filed ret. 6-28-74 at 11:30 A.M.
28-74	Before JUDD, J. - Case called- Deft and counsel present- Motion argued- Granted in part and denied in part as indicated- Case adj'd to 7/8/74 for trial
2-74	By JUDD, J. - Order filed that motion disposed of on the record in open court, June 28, 1974 (order on back of motion papers filed 6-25-74)
3-74	Before JUDD, J - case called - deft Staley & counsel M.I. Grossman present - adj'd to July 15, 1974 for trial.
5-74	Petition for Writ of Habeas Corpus Ad Testificandum filed.
5-74	By Judd, J - Writ Issued, ret. July 16, 1974.
15-74	Before JUDD, J - case called - deft & counsel M.I. Grossman present - deft's motion for reduction of bail argued and denied - case adj'd to July 18, 1974 at 10:00 am for trial.
18-74	Before JUDD, J - case called - deft & counsel Meyer Grossman present - trial ordered & BEGUN - Jurors selected and sworn - Govt opens - Deft opens - trial cont'd to July 22, 1974 at 10:00 am.
22-74	Before JUDD, J. - Case called- Deft and counsel present- Trial resumed- Trial cont'd to 7-23-74 at 10:00 A.M.
23-74	Before JUDD, J - case called - deft & counsel Meyer Grossman present - Trial resumed - Deft's motion for mistrial or a continuance - motion denied - Hearing begun on admissibility of photographs - hearing concluded - deft's motion to suppress is denied - stipulation read into the Record - Govt rests - deft's motion to dismiss argued - motion denied - trial cont'd to July 24, 1974.

CRIMINAL DOCKET

DATE	PROCEEDINGS
7-24-74	Before JUDD, J - case called - deft & counsel present - Trial resumed - deft rests - Govt opens on rebuttal - Govt rests on rebuttal - deft opens on sur-rebuttal - both sides rests - defts motion to dismiss is denied - Govt sums up - Deft sums up - trial contd to July 25, 1974.
7-25-74	Before JUDD, J - case called - deft & counsel Meyer Grossman present - trial resumed - judge charges jury - alternates discharged - marshals sworn - jury retires to deliberate at 10:40 am. Order of sustenance signed - jury returns at 12 noon to hear testimony - jury resumed deliberations at 12:10 PM. Jury returns at 2:50 PM to hear testimony read back - jury resumes deliberations at 3:05 PM - Jury returns at 3:30 PM and renders a verdict of guilty on counts 1 to 7 inclusive - jury polled - trial concluded - Jury discharged - deft renews all motions previously made - motions denied - bail conditions continued - case adjd without date for sentencing.
7-25-74	By JUDD, J - Order of sustenance filed (Lunch)
7-26-74	Writ ret'd and filed - executed
9-11-74	4 stenographers transcripts filed (one dated 7-18-74; one dated 7-22-74; one dated 7-23-74 and one dated 7-25-74)
9/22/74	Before JUDD, J - case called - deft present - Counsel not present - Deft moved for adjournment - adjd to 10/4/74
9/27/74	Affirmation of Meyer Grossman filed.
10-7-74	Before JUDD, J - case called - Deft & counsel Meyer Grossman present - defts motion for a new trial based on newly acquired evidence - hearing begun - hearing concluded - motion for a new trial is denied - deft sentenced to imprisonment for a period of 11 years on counts 1, 3 & 5 to run concurrently; 10 years on counts 2, 4 & 6 to run concurrently with each other and with counts 1, 3 & 5 and 5 years on count 7 to run concurrently with sentence imposed on counts 1 through 6. Sentence imposed is pursuant to 18:4208(a)(1) with eligibility for parole after 2 1/2 years. Deft advised of right to appeal.
10-7-74	Judgment and Commitment filed - certified copies to Marshal.

INDICTMENT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA

-against-

DANIEL STALEY,

Defendant.

-----x

Cr. No. 74CR226

(T. 18, U.S.C., §2113(c), §2
and §2113(d))

3-28-74

Judd, J.

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 12th day of December 1973, within the Eastern District of New York, the defendant DANIEL STALEY knowingly and intentionally aided and abetted Fritz Emanuel Bastian, Larry Coates, Larry Derrick and Arthur Mitchell in knowingly and intentionally, by force, violence and intimidation taking from the person and presence of the employees of the National Bank of North America, 152-80 Rockaway Blvd., Queens, New York, approximately \$17,038.49 in United States currency, which money was in the care, custody, control, management and possession of the said bank, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation and in commission of this act and offense, Fritz Emanuel Bastian, Larry Coates and Larry Derrick did assault and place in jeopardy the lives of the bank employees, as well as the lives of other persons present by the use of a dangerous weapon. (Title 18, United States Code, Section 2113(d) and Section 2).

COUNT TWO

On or about the 12th day of December, 1973, within the Eastern District of New York, the defendant DANIEL STALEY knowingly and intentionally possessed approximately \$2000 which had been taken and carried away with intent to steal and purloin from the care, custody, control, management and possession of the National Bank of North America, 152-80 Rockaway Blvd., Queens, New York, the deposits of which were insured by the Federal Deposit Insurance Corporation at the time of such taking and carrying away, the defendant DANIEL STALEY knew said money to have been so taken and carried away. (Title 18, U.S.C., §2113(c)).

COUNT THREE

On or about the 18th day of December 1973, within the Eastern District of New York, the defendant DANIEL STALEY knowingly and intentionally aided and abetted Larry Coates, Horace Peterson and Jimmy Fennell in knowingly and intentionally by force, violence and intimidation taking from the person and presence of employees of the Reliance Federal Savings and Loan Association, 233-15 Hillside Avenue, Queens, New York approximately \$7,979.00 in United States currency, which money was in the care, custody, control, management and possession of the said bank, the deposits of which bank were then and there insured by the Federal Savings and Loan Association and in

commission of this act and offense, Larry Coates, Horace Peterson and Jimmy Fennell did assault and place in jeopardy the lives of said bank employees, as well as the lives of other persons present by the use of a dangerous weapon. (Title 18, United States Code, Section 2113(d) and Section 2).

COUNT FOUR

On or about the 18th day of December 1973, within the Eastern District of New York, the defendant DANIEL STALEY knowingly and intentionally possess approximately \$2000.00 which had been taken and carried away with intent to steal and purloin from the care, custody, control, management and possession of the Reliance Federal Savings and Loan Association, 233-15 Hillside Avenue, Queens, New York, the deposits of which were insured by the Federal Savings and Loan Association at the time of such taking and carrying away, the defendant DANIEL STALEY knew said money to have been so taken and carried away. (Title 18, United States Code, Section 2113(c)).

COUNT FIVE

On or about the 3rd day of January 1974, within the Eastern District of New York, the defendant DANIEL STALEY knowingly and intentionally aided and abetted Larry Coates, Larry Derrick and Jimmy Fennell in knowingly and intentionally by force, violence and intimidation taking from the person and presence of employees of the

Bayside Federal Savings and Loan Association, 257-25 Union Turnpike, Queens, New York approximately \$12,334.00 in United States currency, which money was in the care, custody, control, management and possession of the said bank, the deposits of which bank were then and there insured by the Federal Savings and Loan Association, and in the commission of this act and offense, Larry Coates, Larry Derrick, and Jimmy Fennell did assault and place in jeopardy the lives of the said bank employees as well as the lives of other persons present by the use of dangerous weapons. (Title 18, United States Code, Sections 2113(d) and 2).

COUNT SIX

On or about the 3rd day of January 1974, within the Eastern District of New York, the defendant DANIEL STALEY knowingly and intentionally possessed approximately \$2000.00 which had been taken and carried away with intent to steal and purloin from the care, custody, control, management and possession of the Bayside Federal Savings and Loan Association, 257-25 Union Turnpike, Queens, New York, the deposits of which were insured by the Federal Savings and Loan Association at the time of such taking and carrying away, the defendant DANIEL STALEY knew said money to have been so taken and carried away. (Title 18, United States Code, Section 2113(c)).

COUNT SEVEN

From on or about the 12th day of December 1973 and continuing thereafter up to and including the 24th day of January 1974, in the Eastern District of New York and elsewhere, the defendant DANIEL STALEY knowingly and intentionally combined, conspired, confederated and agreed with Fritz Emanuel Bastian, Larry Coates, Larry Derrick, Arthur Mitchell, Horace Peterson and Jimmy Fennell, (named as co-conspirators but not as co-defendants) and with other persons to the Grand Jury unknown, to commit the following offenses against the United States to knowingly and intentionally take by force, violence and intimidation from the person and presence of employees of various banks, sums of money, which money was in the care, custody, control, management and possession of the said bank, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation and the Federal Savings and Loan Association, and in the commission of this act and offense to assault and place in jeopardy the lives of the said bank employees, as well as the lives of other persons present by the use of dangerous weapons in violation of Title 18, United States Code, Section 2113(d).

In furtherance of the conspiracy and to effect the objects thereof, the defendant DANIEL STALEY performed the following:

OVERT ACTS:

1. On December 12, 1973, the defendant DANIEL STALEY gave to Fritz Emanuel Bastine, Larry Coates, and Larry Derrick, one handgun each.

2. On December 18, 1973, the defendant DANIEL STALEY gave to Larry Coates, Horace Peterson and Jimmy Fennell, one handgun apiece.

3. On January 3, 1974, the defendant DANIEL STALEY gave to Larry Coates, Larry Derrick, and Jimmy Fennell one handgun apiece and drove the switch car after the completion of the robbery.

A TRUE BILL.

FOREMAN.

UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

AFFIDAVIT OF LEROY JONES

STATE OF NEW YORK)
NEW YORK COUNTY)ss:

I, LEROY JONES, being duly sworn, deposes and says:
That on the 9th of August 1974, I voluntarily surrendered myself to the City Police in Aiken, South Carolina, and explained there was a Warrant issued by the Department of Justice, New York Office, for my arrest on a charge of Bank Robbery.

After being lodged overnight in the County Jail, the F.B.I. took custody of me the next morning and brought me to the F.B.I. Office in Columbus, South Carolina, whereupon I was questioned as to other individuals whose names appeared on the Warrant of Arrest.

I told the F.B.I. that the reason why I turned myself in was because there was an innocent man in Jail for the crime of Bank Robbery which I and Two others committed.

I was asked who was the innocent man involved and I answered DANIEL STALEY.

I was then taken to a Judge in Columbia, South Carolina and given a Lawyer named: JAM S. STIFLING, BARRINGER BLDG, Columbia, S.C., who advised me not to plead guilty or admit my participation in any crimes. But I had already admitted that I was guilty and that I had stolen the car of DANIEL STALEY and used it to commit the Bank Robbery with Larry Derrick and another guy on the Bank located at 85th Street in Bklyn, N.Y.

I had worked for Mr. STALEY and to my knowledge he never was involved in any Bank Robbery.

I make this statement of my own free will and reasoned choice and the reason why I turned myself in was because my conscience was troubling me and I thought that I could testify in Mr. STALEY's behalf at a Trial.

When I came to West Street on the morning of August 31, 1974, I told my story to an Inmate who advised me that if I insisted upon exonerating Mr. STALEY, I would be found guilty and subject to extensive punishment up to Twenty (20) Years for the crimes. This Inmate also, told me that If I was not telling the truth I could also be prosecuted for perjury if I was afraid of STALEY that this Inmate would get the Jail officials to protect me.

Respectfully Submitted

LEROY JONES
427 West Street
New York City, New York

sworn to before me on this

4 day of Sept, 1974

Arthur, D. H. Jones
FDH. M. J.

Charge

(The jury enters the courtroom.)

THE COURT: Good morning, Miss O'Brien, Mr. Grossman, Mr. Staley.

Mr. Foreman, members of the jury, we are now reaching the point when you perform your task in the proceeding. You have heard the evidence and arguments of counsel.

It is my duty to instruct you as to the law that applies in the case. I will describe first the general principles that apply to all criminal trials, and then the nature of the charge in this case and specific rules of law that apply to those charges, and then something about how to evaluate the evidence you have heard, and finally something about how you should reach a verdict.

It is your duty as jurors to follow the law as I stated in my instructions and to apply the rules of law to the facts as you find them from the evidence in the case.

You are the sole judges of the facts. You are to perform this duty without bias or prejudice or against either party.

The law does not permit jurors to be governed

by sympathy or prejudice or even public opinion.

The law presumes that a defendant is innocent of crime. The law permits nothing but the legal evidence presented before the jury to be considered in support of any charge.

This presumption of innocence continues at every stage of the trial and is enough in itself to acquit a defendant unless the jurors are satisfied of his guilt beyond a reasonable doubt from all the evidence in the case.

I will just say a few words about what the law means by reasonable doubt, adding a little bit to what may be plain words.

A reasonable doubt is a fair doubt based on reason and common sense arising from the state of the evidence or from the absence of evidence. A reasonable doubt does not mean a doubt that a juror asserts arbitrarily or capriciously as to avoid performing an unpleasant task.

It is rarely possible to prove anything to an absolute certainty or beyond a possible doubt, and the law does not require this.

Proof beyond a reasonable doubt is often described as referring to the type of doubt that

would make you hesitate to act in your own important affairs when you have to make a decision.

Prove beyond a reasonable doubt operates on the whole case. The rule does not mean that each bit of evidence must be proved beyond a reasonable doubt, or in this case you don't have to establish that a particular witness is truthful beyond a reasonable doubt.

You can consider the sum total of the Government's evidence as affected by the sum total of the defendant's evidence, and determine whether on that basis you are satisfied beyond a reasonable doubt as to each element of the crime charged, or else you must acquit him.

Finding a citizen to be guilty of a felony and subjecting him to criminal penalties is a serious matter, and you can consider this fact in determining whether you have a reasonable doubt.

Nevertheless, if you are convinced beyond a reasonable doubt of the defendant's guilt, you should find him guilty and not be swayed by sympathy.

I am going to read the typical counts of

the indictment. Before I do so, I will say again, an indictment is just a formal method of accusing a defendant of a crime. It is not evidence of any kind against the accused, and the fact that a grand jury made an indictment does not create any presumption, does not create any inference of guilt.

The defendant has pleaded not guilty. The indictment and this plea creates the issue which you must decide.

One thing more, the law never imposes on a defendant in a criminal case the burden or duty of producing any evidence. The burden of proof always rests on the prosecution to prove every essential element of the crime beyond a reasonable doubt. This burden never shifts. The defendant is under no obligation to prove his innocence; in fact, no obligation to prove anything.

A defendant may present himself as a witness as Mr. Staley did in this case. In that even he is subject to cross-examination, as you have observed, and his credibility is for you as a jury to determine, subject to approximately

the same rules that apply to other witnesses.

You can consider that a defendant has a strong motive to lie to protect himself, and that somebody who supplied guns for a bank robbery might not hesitate to lie his way out of it. But you should also consider that somebody who is falsely charged with supplying guns for a bank robbery is perhaps the only one that could tell what happened at a particular conversation.

You consider cross-examination and all the evidence in determining what weight to give to the defendant's testimony, whether to believe him or how much of it to believe.

The indictment charges in Count 1 that:
 "On or about the 12th day of December 1973, within the Eastern District of New York," which includes all of Long Island, the defendant, Daniel Staley, knowingly and intentionally aided and abetted Fritz Bastion, Larry Coates, Larry Derrick, and Arthur Mitchell, in knowingly and intentionally by force, violence and intimidation, taking from the person and presence of the employees of National Bank of North America, 152-80 Rockaway

Boulevard, Queens, New York, approximately \$7,038.49 in United States currency, which money was in the care, custody, control, management and possession of said bank, the deposit of which bank was then and there insured by Federal Deposit Insurance Corporation; and in the commission of this act and offence, Fritz Bastion, Larry Coates and Larry Derrick did assault and place in jeopardy the lives of bank employees as well as the lives of other persons present by the use of a dangerous weapon."

The charge is violation of Title 18, United States Code, Sections 21, 13-D.

Count 2 says that, "On or about the 12th day of December, 1973, within the Eastern District of New York, the defendant Daniel Staley knowingly and intentionally possessed approximately \$2,000 which had been taken and carried away with intent to steal and purloin from the care, custody, control, management and possession of the National Bank of North America, 152-80 Rockaway Boulevard, Queens, New York, the deposits of which were insured by the Federal Deposit Insurance Corporation at the time of said taking and

carrying away."

This charge is in violation of Title 18,
Section 21, 13-C.

Count 3 is like Count 1, except that it
gives the date on or about December 18, 1973, and
defendant Daniel Staley is charged with aiding
and abetting Larry Coates, Horace Peterson and
Jimmy Fennell in taking money from the person
and presence of employees of Reliance Federal
Savings & Loan Association, 233-15 Hillside Avenue,
Queens, New York, and the amount is stated as
approximately \$7,979.

Count 4 is like Count 2. It relates to
the money stolen from the Reliance Federal Savings
& Loan Association.

Count 5 is like Count 1, except that the
date is on or about January 3, 1974, and the
persons who Daniel Staley is alleged to have
aided and abetted are Larry Coates, Larry Derrick
and Jimmy Fennel, and the money is alleged to have
been taken from the Bayside Federal Savings & Loan
Association, 257-25 Union Turnpike, Queens, New
York, and to have been approximately \$12,334.

Count 6 is like Count 2, but it relates

to the possession of \$2,000 taken from the Bayside Federal Savings & Loan Association.

Now, the amounts and the dates in the indictment don't have to be exactly accurate.

Now, I think there was one bank from which Mr. Staley was supposed to have received \$2,000, and of which \$500 was paid to the driver. On the others, the evidence, if you believe it, would indicate that he got \$500 apiece from two of the participants and \$150 from Jimmy Fennel, which would be \$1150 instead of \$2,000.

That is not a material variation if you find that Mr. Staley did receive the amounts.

Count 7 is a conspiracy count. That charges that, "From on or about the 12th day of December, 1973, continuing thereafter up to and including the 24th day of January 1974, in the Eastern District of New York and elsewhere, the defendant Daniel Staley knowingly and intentionally combined, confided, and agreed with Fritz Bastion, Larry Coates, Larry Derrick, Arthur Mitchell, Horace Peterson, Jim Fennell, named as co-conspirators, not co-defendant, and with other persons unknown to the grand jury, to

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commit the following offenses against the United States, knowingly and intentionally to take by force, violence and intimidation from the person and presence of employees of various banks sums of money, which money was in the care, custody, control, management and possession of said banks the deposits of which banks were then and there insured by the Federal Deposit Insurance Corporation and the Federal Savings & Loan Association, and in the commission of these acts and offenses to assault and place in jeopardy the lives of the said bank employees as well as the lives of other persons present by the use of dangerous weapons in violation of Title 18, United States Code, Section 21,13-D."

The count charges a violation of Title 18, United States Code, Section 371.

The indictment continues: "In furtherance of the conspiracy and to effect the object thereof, the defendant Daniel Staley performed the following acts:

"1. On December 12, 1973, the defendant Daniel Staley gave to Fritz Emanuel Bastian, Larry Coates and Larry Derrick one handgun each;

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2 "2. On December 18, 1973, the defendant
3 Daniel Staley gave to Larry Coates, Horace Peterson,
4 and Jim Fennell one handgun apiece; and

5 "3. On January 3, 1974, the defendant Daniel
6 Staley gave to Larry Coates, Larry Derrick, and
7 Jimmy Fennel one handgun apiece and drove the switch
8 c - after the completion of the robbery."

9 Now, again, this is a statement of the
10 charge. It is not evidence that you would consider
11 as supporting the guilt of the defendant.

12 Counts 1, 3 and 5 of the indictment are
13 based on Section 21.13-D of the United States
14 Code, which says: "Whoever by force and
15 violence or by intimidation takes or attempts
16 to take from the person or presence of another
17 any property or money or anything of value
18 belonging to or in the care, custody, control,
19 management or possession of any bank, credit
20 union or savings and loan association, and
21 in committing or attempting to commit such an
22 offense, assaults any person or puts in jeopardy
23 the life of any person by the use of a dangerous
24 weapon or device shall be fined or imprisoned" --
25 while we are talking about the amount of penalty,

that is something I decide and not the jury, so I am not going to repeat that.

"Banks and savings and loan associations" are defined as banks whose deposits are insured by Federal Deposit Insurance Corporation or savings and loan associations as defined in the statute.

Section 2 of Title 18 of the United States Code is the aiding and abetting statute. This says, "Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission is punishable as a principal."

That means that a person who aids in committing a crime is just as guilty as the one who actually commits it.

However, knowledge that a crime is being committed even when coupled with presence at the scene is generally not enough to constitute aiding and abetting.

If Mr. Staley was present and gave out handguns, then he was aiding and abetting. If one of the robbers came back to ^{the} store and divide up the money, and Mr. Staley wasn't there, or if he

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2 was there and knew about it and had nothing to
3 do with it, that is not enough to consider, to
4 find him guilty.

5 You must find that he had something to do with
6 the planning of the crime, with the recruitment of
7 the individuals or with the delivery of guns to
8 them in order to find that he was aiding and abet-
9 ting. In other words, in order to aid and abet
10 another person to commit a crime, it is necessary
11 that the defendant in some way associated himself
12 with the venture, participated in it as something
13 he wanted to bring about and seeks by his actions
14 to make it succeed.

15 Now, the fourth count in the indictment refers
16 to -- oh, wait a minute. I have the fourth and
17 sixth count to refer to, and they are based on
18 Section 21,13-C, which says, "Whoever receives,
19 possesses, conceals, stores, barter, sells,
20 or disposes of any property or money or other
21 thing of value, knowing the same to have been taken
22 from a bank, credit union or savings and loan
23 association in violation of this section shall
24 be subject to punishment provided," and subsection
25 "B", "for the taking" -- and that is a lesser

penalty which I need not describe, because receiving money from a bank robbery is a crime whether it was committed with a gun or not. The gun makes it a little more -- provides for a little more serious penalty.

Then the seventh count of the indictment is the conspiracy count, and this is based on a section which says, "If two or more persons conspire to commit any offense against the United States, and one or more of such persons does any act to effect the object of the consiracy," each shall be punished as the law provides. Again, I do not give the nature of the penalty, but it is less than the penalty for the bank robbery itself.

The elements of a crime that normally have to be established for a bank robbery are first the act or act of taking money belonging to a bank from the person or presence of another. Second, in 21,13-D, taking it by force or violence by the use of a dangerous weapon. Third, doing it wilfully, and fourth, that the bank was insured by the Federal Deposit Insurance Corporation.

Here the problem isn't so much whether these

elements are established as whether the defendant took part even without being there or by driving a getaway car in helping somebody else to take money by force from a bank that was insured by the Federal Deposit Insurance Corporation.

The Counts 2, 4 and 6 under 21,13-C require proof first of possession of the money or receipt of the money, and second, of knowledge that it had been stolen from a bank.

Mr. Staley isn't just charged with renting guns. That would be a State violation. He is charged with receiving money for the guns that he knew had been stolen from a bank, and you have to find that he knew the money was so obtained in order to find him guilty.

The Government must prove every element of the crimes charged beyond a reasonable doubt. If you have a doubt as to any element, you must acquit.

Now, on the conspiracy count a separate set of elements is required. First, that two or more persons were involved, which I guess you can determine here if Mr. Staley is guilty at all, he is guilty of acting in concert with the robbers of the particular banks.

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2 Second, that they wilfully and knowingly
3 conspired and agreed, to have to find that Mr.
4 Staley knew what he was doing.

5 Third, that they conspired to do an act
6 forbidden by law, in this case to take money
7 from banks by force and violence.

8 Fourth, that one of the members of the
9 conspiracy did something to effect the object
10 of the conspiracy.

11 Just sitting together and agreeing that
12 you are going to rob a bank isn't enough.
13 Somebody has to do an act toward it, and here
14 Mr. Staley is accused of having provided the gun
15 and in one case having driven the getaway car,
16 and you would have to find that.

17 Again, if any element of the crime is not
18 established beyond a reasonable doubt, your
19 verdict must be not guilty. You can't infer
20 the existence of one element of the crime
21 simply from the existence of the other, but if
22 you find that all the elements of the crime
23 have been proved beyond a reasonable doubt, then
24 you must bring in a verdict of guilty.

25 Now, conspiracy is a little complicated.

I have to read you the rules applicable to this: A conspiracy is a combination of two or more persons to accomplish an unlawful act or a lawful act by unlawful means. While it involves an agreement to violate the law, it is not necessary that the persons charged entered into or expressed a formal agreement or stated specifically orally or in writing what the scheme was or how it was to be effected. It is sufficient to show that they came to a mutual understanding to accomplish an unlawful act. Such an agreement can be inferred from the circumstances and the conduct of the persons, since ordinarily a conspiracy is characterized by secrecy. Each member of the conspiracy may perform separate and distinct acts.

It is necessary, however, that the Government prove beyond a reasonable doubt that a defendant was aware of the common purpose and was a willing participant with an intent to advance the purpose of the conspiracy.

Now, there was discussion as to whether there was proof that these guns were operable. There was evidence that they were loaded, and

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2 as far as the Federal crime is concerned, if
3 somebody brandishes a loaded gun at a bank
4 employee, he cannot excuse himself by saying that
5 he didn't know whether the gun would work if he
6 pulled the trigger.

7 It is not necessary for you to find it
8 operable. It is just necessary to find that
9 there were handguns which could be used to
10 intimidate people in the bank.

11 Now, there are generally two kinds of evidence
12 that are referred to in connection with a criminal
13 trial. One is direct evidence and the other is
14 indirect or circumstantial evidence.

15 Direct evidence is the testimony of a witness
16 like the testimony of Messrs. Fennell, Derrick
17 and Coates, that they were handed guns by Mr.
18 Staley and were told what the purpose of the guns
19 were.

20 The other is indirect or circumstantial
21 evidence, which is the proof of the facts pointing
22 to the existence or non-existence of certain facts.

23 The Government says that Mr. STaley's report
24 that his car was stolen, because according to one
25 of the witnesses, he thought it had been spotted

outside the Bayside Bank, is circumstantial evidence that he was a participant in the bank robbery.

Mr. Staley points to the fact that there had been a fight with Mr. Coates, and as he alleges in his story, is circumstantial evidence that Mr. Coates had a grudge against him and would lie him into jail in order to satisfy that grudge.

As a general rule, the law makes no distinction between direct and circumstantial evidence. Circumstantial evidence to establish guilt does not have to exclude every reasonable hypothesis of innocence. It is only necessary that the jury be satisfied with defendant's guilt beyond a reasonable doubt on the basis of all the evidence in the case, both direct and circumstantial.

Now, when you go into the jury room, you do not leave your common sense outside. In analyzing the evidence, you can draw reasonable inferences based on your own common sense, based on your own inference from any facts that you find were proved. You are not confined to the bare bones of the testimony or the exhibits, but you are not permitted

to guess or speculate.

You cannot supply things that are not proved in order to establish guilt.

I think I said already that knowledge that a crime is being committed even coupled with presence isn't enough to constitute aiding and abetting.

Now, you have a difficult task of determining credibility of witnesses and weighing evidence, and in weighing the testimony of the various witnesses, you can consider their relationship to the Government, their bias or their interest in the outcome of the case, their manner while testifying, their candor and intelligence as you observed it. You can consider the extent to which any testimony has been corroborated or contradicted by other credible evidence, inconsistencies within the testimony of any witnesses, either on direct or cross-examination, whether any witness changed his testimony.

Inconsistencies in the testimony of witnesses may lead you to disregard their testimony in whole or in part, but a witness may have been mistaken or untruthful with respect to part

of his or her testimony and be correct and truthful with respect to other parts.

The witnesses were testifying to things that happened six or seven months ago, and there were four different witnesses about what took place at various bank robberies, and you consider in your own experience what differences there may be between descriptions of the same event that pointed to distance in time and whether any inconsistencies proved a falsehood or whether they can be explained.

You are not to give any greater weight or credibility to the testimony of a witness in the case solely because of the fact that he is a Government agent. His testimony is to be evaluated without any plus, without any minus, in the same manner as you would evaluate the testimony of any other witness.

We had testimony about some of the witnesses being under the influence of drugs. There really wasn't any testimony as to how that affects a witness's credibility or observation. I think it is common knowledge that when Coleridge wrote the Ancient Mariner, he was on opium.

1
2 He was an addict, and that was a magnificent
3 story.

4 You can use your own judgment as to how
5 truthful these particular witnesses were.

6 Now, we have another special rule that
7 applies here. The first three Government witnesses,
8 Mr. Fennel, Mr. Derrick and Mr. Coates were
9 accomplices. They were taking part in the crime.
10 Mr. Peterson, who testified for the defendant,
11 was also an accomplice, but the rule does not
12 affect him quite as much.

13 An accomplice is somebody who units with
14 another person in the commission of a crime volun-
15 tarily and with common intent, and an accomplice
16 does not become incompetent as a witness because
17 of participation in the crime charged.

18 On the contrary, the testimony of an
19 accomplice alone, if believed by the jury, may
20 be of sufficient weight to sustain a verdict of
21 guilt, even though not corroborated or supported
22 by other evidence.

23 However, the jury should keep in mind that
24 such testimony is always to be received with
25 caution and weighed with great care. You

1
2 should never convict a defendant upon the un-
3 supported testimony of an alleged accomplice
4 unless you believe that unsupported testimony
5 beyond a reasonable doubt.

6 Now, here the Government finds corroboration
7 for its accomplice witnesses first by the fact
8 that they bolster each other by the way their
9 stories fit together; second, by minor things
10 like the fact that Mr. Staley had accounts in
11 two of the banks. His brother had an account
12 in one and that might have given him occasion to
13 be in the bank so that he could look around and
14 judge whether it was one that could be robbed.
15 And perhaps corroboration of the three Government
16 witnesses by the fact that Mr. Peterson admitted
17 at least on one occasion the robbers met in
18 Daniel Staley's store, although he said it
19 was at a time when Mr. Staley was not there.

20 There was a proverb quoted to you that it
21 is better to acquit a hundred guilty men than
22 convict one innocent man. That is what a
23 judge said in a case some time ago. It is not
24 a necessary requirement of the law. I don't know
25 that that is the standard of reasonable doubt.

1
2 You will determine reasonable doubt by
3 what I stated before, whether there is a reasonable
4 gap in the evidence or doubt in the evidence such as
5 would make you hesitate to act in important
6 matters in your own affairs.

7 I told you at the beginning, and I repeat it
8 now, you are not to be influenced by the fact that
9 there were objections to some questions,
10 some items of evidence, that were sustained.

11 You are to disregard any evidence that I
12 struck out. Consider the case only on the
13 testimony and exhibits that I admitted into evidence
14 or came in without objection and stipulation of
15 the parties that they have been received.

16 I have said a few things about particular
17 evidence in the case. I am not trying to out-
18 line the evidence to you. I have used
19 particular parts as illustrative, and I am not
20 intending to indicate any opinion as to the guilt
21 or innocence of the defendants. That is entirely
22 for you to determine, and if I have been
23 inaccurate in anything I said about the evidence,
24 It is your recollection that governs, not what
25 I said nor what counsel said.

If you want to see some of the evidence,
33

1
2 or rehear some of the testimony, it will take a
3 little while to get the court reporter to find the
4 particular part, but you can call for a
5 particular portion if you wish.

6 Now, a few words about reading a verdict.
7 Your verdict must be unanimous on each count.
8 You have to all agree. It is wise to discuss
9 the evidence rather fully before taking even
10 a tentative vote so that no one can jump to
11 a hasty conclusion before weighing the entire
12 case.

13 When you retire to the jury room, you can
14 get the exhibits if you want to look at them.

15 When you go into the jury room, Mr. Quinn
16 can act as your foreman and preside over your
17 deliberations. He will try to see, I hope, that
18 everybody gets a chance to talk, that not more
19 than one person talks at a time so far as
20 possible.

21 During your deliberations, you should assume
22 the attitude as judges of the facts, not
23 partisans or advocates. In that way you will be
24 making a high contribution to the administration
25 of justice.

1
2 You should report a verdict on each of the
3 seven counts.

4 While I haven't done so, I think I will
5 prepare a little form to help you in distinguishing
6 the various counts.

7 In determining guilt or innocence of the
8 defendant, do not give any consideration to
9 the matter of punishment. That is exclusively
10 my responsibility.

11 If the defendant is found guilty, I may
12 consider extenuating or exacerbating facts that
13 are not part of the record here.

14 There will be a marshal available outside the
15 jury room to let me know if there are any
16 questions that you want to have answered or to
17 report that you have reached a verdict.

18 When you have reached a verdict, you just
19 write a note to that effect, and when you come
20 in, Mr. Quinn will announce the verdict orally,
21 and then either party may ask that the jury be
22 polled, which means that you may each be asked
23 whether you in fact concur with the verdict so that
24 we can know that it is unanimous.

25 You are each entitled to your own opinions,

1 but you should exchange views with your fellow
2 jurors and listen carefully to each other.

3 You should not hesitate to change your
4 initial opinion if you are convinced that somebody
5 else had a more accurate or complete view of
6 the fact, but you do not have to agree with the
7 majority. Your decision must be your own.

8 I have assumed that you may continue
9 through lunch -- and do you have the luncheon
10 menu?

11 THE CLERK: They have been called in already,
12 Judge.

13 THE COURT: Which will get in sometime
14 between twelve and one.

15 If you haven't reached a verdict by afternoon,
16 you can determine how late you want to stay or
17 whether you want to come back tomorrow.

18 We have a trifle of an anticlimax here,
19 because counsel have a right to call my
20 attention to anything I have said that they
21 disagree with or anything that I may have omitted,
22 and after you retired to the jury room, I will
23 either send in a note that there are no
24 exceptions or I will bring you in for some
25 corrections, but I will conclude by saying

1
2 that the oath that you took at the beginning,
3 to sum up your duty, without fear or favor to
4 any man, you will well and truly try the issues
5 between these parties according to the evidence
6 given to you in court and the laws of the United
7 States.

8 Now, we have been fortunate for a week.
9 Nobody has had illness or family incident.
10 So Mr. Fitton and Miss Bochstein will be excused,
11 and I will ask the Clerk to swear a marshal to
12 keep the jury in custody.

13 THE COURT: Yes, your Honor.

14 (The Court Clerk swore in the marshal.)

15 THE COURT: All right. Do you want to
16 go into the jury room and get some things?

17 ALTERNATE JUROR: Yes, I have an umbrella.

18 THE COURT: All right, Mr. Quinn, you and
19 the other jurors can follow.

20 (The jury leaves the courtroom.)

21 THE COURT: Miss O'Brien, have you any
22 exceptions?

23 MISS O'BRIEN: Yes, just one, your Honor.
24 Your Honor has made a statement that you can
25 consider a witness's relationship to the

Government. I also ask that they may consider any relationship a defense witness might have to the defendant, specifically, Mr. Peterson's association with Mr. Staley.

THE COURT: Well, you give me a request. I try to balance my charges. Unless I have to make some correction for Mr. Grossman, I will let that pass.

MR. GROSSMAN: There are four things.

THE COURT: Wait just a minute. I want to see what I said on that.

I said the Government.

Yes, Mr. Grossman. Any exceptions?

MR. GROSSMAN: In reference to Count 4 and Count 6 as to amount of \$2,000. It is true that the amount doesn't have to be proved, but the amount of \$2,000 goes towards the credibility of the witnesses who are testifying.

THE COURT: What do you mean by that?

MR. GROSSMAN: Well, some of the witnesses testified they gave \$150, which comes out to \$1150. Some gave \$500, which came out to \$1500. There is a divergence of statement by the three witnesses as to the amounts, so therefore it goes

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2 to the credibility of the witnesses who were
3 testifying.

4 THE COURT: I said they could consider
5 inconsistencies, but you want me to say the
6 indictment isn't evidence, and the \$2,000 I don't
7 think creates an inconsistency. I don't think
8 there is anything else I need say on that.

9 MR. GROSSMAN: Now, in the aiding and abet-
10 ting, Justice Hand's -- you said everything
11 except that you didn't say that he seeks that-- the
12 defendant seeks by his own action to make it
13 succeed, the aiding and abetting.

14 THE COURT: I said that.

15 MR. GROSSMAN: You said that?

16 THE COURT: Yes.

17 MR. GROSSMAN: To make it succeed?

18 THE COURT: I'm quite sure. That he
19 seeks by his action to make it succeed.

20 MR. GROSSMAN: All right.

21 Now, as to the guns operable, as to that
22 statement, I am taking an exception.

23 THE COURT: Yes, all right. I am quite
24 sure that that is the rule in the Second
25 Circuit.

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2 MR. GROSSMAN: Now, also that it was
3 incumbent upon the Government when they mentioned
4 that a stolen car was being in front of the
5 bank that it be corroborated. There was no
6 corroboration as to that material fact, which is
7 an important item in this case. It was just
8 a statement by a witness without corroboration.

9 THE COURT: Well, it was a statement by an
10 accomplice witness. There is no requirement
11 of corroboration in the Federal Court, and it
12 is not an essential element of the crime.

13 MR. GROSSMAN: The corroboration of a
14 material fact in the case.

15 THE COURT: I stated that they could
16 believe the uncorroborated testimony of an
17 accomplice but that they must --

18 MR. GROSSMAN: That I know.

19 THE COURT: -- but that they must receive it
20 with caution and weigh with great care.

21 MR. GROSSMAN: All right.

22 THE COURT: I am going to leave it that
23 way.

24 MR. GROSSMAN: All right, I take an exception
25 to that.

1
2 THE COURT: Yes, all right.

3 MR. GROSSMAN: Thank you.

4 THE COURT: All right, I am going to leave
5 it.

6 I guess we will have to send Mr. Staley down-
7 stairs and get him back up.

8 MR. GROSSMAN: May I just talk to him for a
9 few minutes.

10 THE COURT: Yes.

11 One more think on this. Suppose I just
12 mark for the Court's exhibit defendant's requests
13 to charge.

14 (Same marked Court Exhibit 1.)

15 -----
16 (Jury note marked Court Exhibit No. 3.)

17 -----
18 (Jury note marked Court Exhibit 4.)

19 THE COURT: All right, bring in the jury,
20 please.

21 (Jury returns to the courtroom.)

22 THE COURT: Mr. Foreman, I have your note
23 saying you have reached a verdict.

24 Will you announce it?

25 THE FOREMAN: We, the jury, find the

defendant, Daniel Staley, guilty on all seven counts.

THE COURT: All right, Mr. Grossman, I presume you want the jury polled?

MR. GROSSMAN: Yes, please.

THE CLERK: Ladies and gentlemen, I have received your verdict. You say you find the defendant guilty on Counts 1 through 7?

(The jury was polled, and the verdict was confirmed as above stated.)

THE COURT: Ladies and gentlemen, I thank you for the time and effort that you have put into this case. I think for the new jurors it has certainly given a demonstration of the protections we try to provide for defendants and the tasks that the Government has.

You are now free to talk about the case. You do not need to answer anybody's questions about it. You should not discuss deliberations in the jury room. That is something that is confidential and cannot be used to attack a verdict.

I think you might be interested to know some of the things I got at the side bar.

Verdict

The police report shows that Mr. Staley's car was outside the Bayside Bank but he didn't put down the name of witnesses so the Government was not able to bring anybody in.

I don't know what the reason is that Sonny was not here. I didn't give you the missing witness charge because I thought it might have been more prejudicial to the defendant than to the Government, but at any rate, nobody called him, and the reason I released Mr. Fennel isn't just because he was testifying in this case but it was because other government agents thought he might be helpful on the street in ferreting out other crimes.

I have tried to be fair in my dealings with everyone. There was a time when Mr. Bastian said that he would testify for the defendant in the case. In this case he has been convicted in a jury trial at which Mr. Fennell -- and I'm not sure whether one of the other defendants testified. He is awaiting sentence. His lawyer was uncertain whether to permit him to testify. Thereafter he talked with Miss O'Brien and said that he would testify for the Government in this

case if his lawyer wanted him to, but not having testified in his own trial, he might have run some risk in testifying here. One of the difficulties in a case like this is in cross-examination of accomplice testimony, because you properly view it with caution and you took time enough to study the case. I am glad you have reached a verdict, and Mr. Rijokus will give you your cards and you are now excused. Is it still another week for this jury?

THE CLERK: I don't think so.

THE COURT: All right. I think you have done your job. You have, it's a real responsibility.

(The jury was excused.)

THE COURT: Miss O'Brien, the defendant is in custody now under bail that he hasn't been able to meet. I suppose there is no reason to increase the bail.

MISS O'BRIEN: No, your honor.

THE COURT: I think having kept it while he was still presumed innocent, I should let it stand, Mr. Grossman.

MR. GROSSMAN: I would still like to see

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2 it reduced, your Honor, because we are going
3 to go up on appeal. Now, that the jury is out,
4 I don't understand it. I think the man is
5 innocent. I don't understand how corroboration
6 could have been made by people of that kind,
7 of that type of witness.

8 THE COURT: You might have needed more
9 corroboration in the State court. I don't know
10 about that. If you want to help on the appeal,
11 I can sentence him now without a pre-sentence report
12 and then I will get a pre-sentence report, and
13 if the conviction is affirmed, I will entertain
14 a motion to reduce. Otherwise I will wait
15 until sentence.

16 MR. GROSSMAN: I would rather wait until
17 your probation report comes in.

18 THE COURT: All right, and you will be
19 notified.

20 MR. GROSSMAN: Then you can see his background
21 and so forth.

22 THE COURT: Of course. Late September
23 sometime.

24 MR. GROSSMAN: Of course I wish to make the
25 ordinary motion. I move to set aside the verdict

as contrary to law, contrary to the weight of the evidence, and also ask for judgment of acquittal pursuant to rules.

THE COURT: I assume you made all the motions, and I deny the motion.

I think there was a jury question, and I trust that my rulings if not perfect were fair.

MR. GROSSMAN: Yes, they were.

Rule 29.

THE COURT: Certainly the defendant was vigorously defended.

MR. GROSSMAN: I hope so.

THE COURT: I think you did everything you could for him.

I don't know what the story is on Sonny. I think he was described as a former employer.

MISS O'BRIEN: I do know, your Honor, if I'm --

MR. GROSSMAN: There is always a question of money. It's a question, can you go into that neighborhood -- I tried four times. I couldn't get out of the car, I was afraid.

MISS O'BRIEN: Your Honor, the FBI agent a week before the trial went to Sonny and gave him

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2 a subpoena for one of the earlier trial dates that
3 we originally had scheduled. He talked to
4 Sonny at the time. Sonny informed him at that time,
5 "You got the wrong man. Tex did it, but I'm not
6 going to come down and testified."

7 He did not show up, so we didn't inform
8 Mr. Grossman as to Sonny's statement to the agent
9 as to what the were. Tex was here. Mr. Grossman
10 spoke to him.

11 MR. GROSSMAN: I spoke to him. I saw
12 the type of person he is. There's no sense
13 compounding evidence of that type. I do know
14 that. I tried my best. It was a question,
15 if the neighborhood was only fair to me, and if
16 I would have had the resources behind me, perhaps
17 I could have hired an investigator of his own race
18 who could have gone into that neighborhood,
19 gotten statements and witnesses just the way that
20 the FBI does. You see, one thing about the
21 Government, you can't counteract the investigation
22 of the FBI. You can't, it's impossible.
23 Washington just told us that.

24 THE COURT: Their investigation isn't
25 always that complete. I would feel more

comfortable about the verdict if they had --

MR. GROSSMAN: I tried to find Tex at least four, five days. Yesterday Danny Colson goes down and gets him. I can't camp on his home. I can't hang around that neighborhood.

THE COURT: I have people brought in that the FBI has been looking for for seven months. You don't always find them when you want them.

MISS O'BRIEN: If I may state the reason, the FBI tried on four prior occasions to locate Tex and finally located him the day he was here. In addition to that, Mr. Grossman before trial had made this argument that he did not have investigators, and the Court offered to appoint an investigator under the Criminal Justice Act at that time. He didn't avail himself.

THE COURT: The verdict is in.

On date of sentence you will be notified of right to appeal.

MR. GROSSMAN: I want to say one thing. I know you have a large calendar. I am only defending people, and I'm practicing 28 years, who I think innocent. I don't and never have been retained or will retain my services to a

1
2 person who I think is guilty.

3 THE COURT: The dean of Hofstra Law School
4 disagrees with your philosophy, but I disagree
5 with his ethics.

6 MR. GROSSMAN: I wish to thank you for
7 the way that you conducted the court.

8 THE COURT: Take Mr. Staley down.
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O'Brien-Summation

1
2 Mr. Grossman told you or asked you why don't
3 we have any photographs of Mr. Staley. Why don't we
4 have? Weren't there any guns? Why don't we have
5 Mr. Staley's fingerprints in the bank or any other
6 evidence concerning that. Why are you relying upon
7 accomplice testimony, ladies and gentlemen, because
8 you have heard the testimony; you know there is no
9 photographs because Mr. Staley never robbed the bank
10 himself, because Mr. Staley would give guns to addicts
11 and to other criminals in the neighborhood. Yes,
12 members of the Seven Crowns, members of organizations
13 and dangerous gangs.

14 You have heard the testimony Mr. Staley made.
15 Sure there were no photographs. Mr. Staley would send
16 Sonny to stash the guns on each and every occasion.

17 What did Mr. Coates testify again specifically
18 to this robbery on December 12th that he met with
19 Mr. Staley five days before? Mr. Staley said, "I got
20 a bank to hit." Mr. Coates thought it over, considered
21 it. He said, "All right."

22 Staley told him, "I have got it all cased out."

23 Mr. Derrick testified that sometimes before the
24 robbery, Coates contacted him. Coates told Derrick
25 Danny's got a job for us.

Summation -O'Brien

1
2 he's had, but what were those arrests, ladies and
3 gentlemen?

4 He's been arrested for a number of occasions,
5 Southern Los Angeles, marijuana charges. Vast majority
6 of arrests made. Some mention made, Town of Hempstead.
7 And claims it wasn't him. Someone else using his name.
8 Mr. Fennell has never told you under any circumstances
9 that he was a drug addict or dope fiend, as Mr. Gross-
10 man would testify, have you believe, and had stated in
11 his summation.

12 Mr. Derrick has never told you that he's a dope
13 fiend or that he was under the influence of narcotics.
14 He said at one time he used narcotics, but he never
15 said that he used narcotics during the period in
16 question, and we are dealing with during the bank
17 robbery.

18 Mr. Coates has in fact told you that he was
19 an addict at the time of the robbery as has Mr.
20 Peterson in the case.

21 I would ask you, ladies and gentlemen, first
22 to look at the testimony of Mr. Fennell. Try to
23 rationalize in your own mind why any man would come
24 to the United States Attorney's office, then before
25 the Grand Jury and then subject himself to a day or
so of cross examination by Mr. Grossman in a court of

Summation-O'Brien

1
2 law. Why would he do all those things, ladies and
3 gentlemen, if he were merely lying?

4 Now he told you quite candidly that the
5 other counts against him were dismissed, but he also
6 told you, ladies and gentlemen, he's been subjected
7 to penalties of twenty years imprisonment. He's not
8 been granted immunity. He is not going scot-free,
9 ladies and gentlemen. He has candidly admitted his
10 participation in the robbery. He is subject to twenty
11 years imprisonment. Certainly, he hopes his Honor
12 will take that into account at the time of sentence.
13 He hopes if he cooperates, he will get less of a
14 sentence by cooperating, but there isn't any evidence
15 whatsoever, that he was instructed to lie. Why would
16 Mr. Coates lie when he knows he is going to be sentenced
17 by Judge Judd in a few weeks? Why would he lie to the
18 Judge, increase his sentence? Why would he subject
19 himself to further perjury counts? Mr. Grossman would
20 have you believe that Mr. Coates first of all, lied
21 because there was the fight in the grocery store,
22 a fight over two dollars and some odd cents with the
23 groceries.

24 MR. GROSSMAN: Your Honor, I object to that.
25 It wasn't two dollars. It was twenty eight dollars.

THE COURT: It was twenty dollars in groceries

5 1 this morning.

2 MS. O'BRIEN: Twenty dollars in groceries.
3 Mr. Grossman would have you believe that Mr. Coates
4 is so vicious or so I dont know what. He was so
5 bent on singing, Mr. Staley, why? Because Mr. Staley
6 wouldnt give him twenty some odd dollars of groceries
7 in the store. Is that reasonable, ladies and gentlemen,
8 based on your own common sense?
9

10 Do you believe any individual would come and go
11 to all the trouble of testifying before the Grand Jury,
12 coming to the U.S. Attorney's office and going before
13 a court of law, and standing cross examination merely
14 for twenty dollars or merely for a grudge on his side
15 of this amount?

16 Mr. Coates told you that he remembered the fight.
17 He remembered the incident. Mr. Staley was involved in
18 a discussion with Mr. Bashian and Mr. Staley has used
19 that very discussion, that very incident and has read
20 the details, but he is putting in the name, Larry
21 Coates now, ladies and gentlemen, in order to have you
22 believe that there is some reason or some manner that
23 Mr. Coates would deliberately lie and take the stand
24 in order to put him in jail.

25 I ask you, is that reasonable?

And beyond that, ladies and gentlemen, whether

1
2 Mr. Grossman has led you to believe that myself
3 or agents, have gotten together with the three men.
4 That we also have attempted to give them a question
5 and answer session, that we have attempted to tell
6 them what to say. You heard the testimony of
7 Mr. Derrick, ladies and gentlemen. Quite candidly,
8 I interviewed them, each one at a time, and on each
9 occasion, they volunteered the information.

10 I did not tell them who was involved or what
11 was involved in the case. We did not tell them about
12 Daniel Staley. They themselves were the first ones
13 to volunteer information about Daniel Staley.

14 MR. GROSSMAN: Your Honor, I wish to object to
15 this. I mean, we all know what goes in front of the
16 Grand Jury. We know that there is no attorney for
17 the defendant, and you ask leading questions.

18 THE COURT: I think Ms. O'Brien was addressing
19 to the question of whether she had put words in the
20 witnesses' mouths.

21 MR. GROSSMAN: Perhaps someone did then.

22 THE COURT: And I think again, Ms. O'Brien
23 should make plain that she is not trying to tell the
24 jury what she did out of the presence of the courtroom.
25 She is trying to summarize what she believes the witnesses

1
2 You yourselves remember what Mr. Grossman said
3 during summation and throughout the trial. I ask you,
4 is an illiterate man a man that doesn't know what
5 is going on?

6 Can he run a grocery store at 15, 18 hundred
7 dollars a week?

8 How about this man? This man has a record of
9 convictions for possession of a weapon. This man
10 that when he was introduced to Mr. Coates, Mr. Derrick,
11 rather, took one look at his jacket and said, "Yes,
12 it's a .38 Magnum, sawed off shotgun."

13 How does he know at a moment's notice, Mr. Coates
14 Mr. Derrick, had a .38 Colt Magnum shotgun?

15 Because, ladies and gentlemen, Mr. Staley is
16 not an illiterate grocery store owner. Mr. Staley is
17 an individual that has placed guns in the hands of
18 bank robbers, in the hands of people that have been
19 accused in the past of being attempted murderers.
20 He has schooled them, ladies and gentlemen, schooled
21 them in the art of bank robbery.

22 MR. GROSSMAN: Your Honor, I object again. There
23 is no basis for this schooling. I am moving for a
24 mistrial. It is prejudicial. It is inflammatory.
25 It should not be said. I don't understand it.

19 1 He told them to do this and that, and rob
2 banks. He's gotten the drivers for them. He has,
3 at times, himself participated directly in driving
4 the switch car that was used in these robberies, and
5 yes, he has shared in the proceeds of his educating
6 these individuals.
7

8 He has himself received a share of each and
9 every robbery that was testified to. We ask, ladies
10 and gentlemen, that you consider all the evidence
11 and that you not act as advocates. Some of you on
12 one side, some of you on the other side. I would ask
13 that all of you attempt to reconstruct in your own
14 minds, exactly what happened on these robberies.
15 Try to reconstruct in your own minds who is telling
16 the truth and who is not telling the truth. Try to
17 consider the motivation of all these individuals in
18 order for you to form a conclusion as to Mr. Staley's
19 participation or his failure to participate in this
20 robbery.

21 It is our conclusion, ladies and gentlemen,
22 the evidence in the case, rather than Mr. Staley was
23 an aider and abetter in this crime. He shared in
24 the proceeds of these crimes and that he in fact,
25 conspired with all the individuals to commit these
bank robberies, and that he is in fact, guilty as he

1 21 Petersen - cross - O'Brien
2 the store?

3 A No.

4 Q Did you ever hang around the store socializing?

5 A No.

6 Q Did you ever pop drugs in the store?

7 A No. I mean, the store is a place of business.
8 It's not a place to hang out in. It's not a pool room.

9 Q Did you ever meet friends there?

10 A No.

11 Q You never saw anybody else receive drugs in
12 the store?

13 A No.

14 MR. GROSSMAN: Your Honor, I'm going to object
15 to this line of questioning unless there is proof on
16 the direct.

17 She is now bringing in extraneous matters.
18 She can only cross-examine in reference to the direct
19 testimony or questions leading away from the direct.

20 She is now bringing up extraneous matters.

21 THE COURT: Please, lady and gentlemen, the
22 directions as to law should come from me and not from
23 counsel.

24 On cross-examination an attorney may bring up
25 anything that bears on the credibility of the witness

1
2 A That was before the robbery went over. That
3 was the agreement he had made.

4 Q Did he ever ask you for a particular amount
5 of money?

6 A He didn't ask for a particular amount, but he
7 was talking about -- around what he was expecting. And Larry
8 Coates said, "Well, I'm going to give him 500 because I
9 worked with him before."

10 Horace Peterson said, "I will give him 500."
11 I couldn't see giving him 500. And I went in
12 the bank.

13 Q Did you give him any money?

14 A Yes. I gave him \$150.

15 Q What happened after you gave him this money?

16 A After I gave him the money, then I gave him my
17 pistol because I left immediately after I gave him the money.
18 Because his brother -- his own brother had told me that we
19 were supposed to -- supposed to have been robbed.

20 THE COURT: You can't talk about anybody else.

21 MS. O'BRIEN: That's hearsay.

22 Q All right. You had returned the guns and you
23 yourself had given to the defendant \$150; is that correct?

24 Did you observe the other two individuals,
25 Larry Coates and Horace Peterson, give to Mr. Staley an

MS V. Staley - Grossman

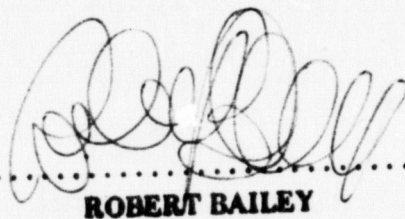
STATE OF NEW YORK)
) SS.
COUNTY OF RICHMOND)

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 15 day of *Sept*, 1975 deponent served the within *Appellants* upon *Attorneys*

attorney(s) for *Appellee*

in this action, at *225 Cadman Plaza East*
Brooklyn NY

the address(es) designated by said attorney(s) for that purpose by depositing 3 true copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.


.....
ROBERT BAILEY

Sworn to before me, this
15 day of *Sept*, 1975.
William Bailey
WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, 1976